

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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ALM-11
M. Browne

[Request For Reimbursement of Relocation Expenses]

FILE: B-193395

DATE: October 31, 1979

MATTER OF: Ledolph Baer - Appointee - Shortage Category
Relocation

DIGEST: Manpower shortage appointee of the National Oceanic and Atmospheric Administration is entitled only to travel expenses (including per diem) for himself, transportation expenses of his immediate family, and shipment of his household goods to his official station notwithstanding that he was erroneously told he was entitled to other expenses, since the Government cannot be bound beyond actual authority conferred upon its agents by statute and regulation.

ISSUES DECIDED

It is determined here that error made by an agency in informing an appointee in a shortage category that he was entitled to per diem for family members and miscellaneous expenses provides no authority to reimburse the employee for these expenses which are in excess of those permitted under 5 U.S.C. 5723. The Federal Travel Regulations (FTR) (FMPR 101-7, May 1973) specifically preclude payment.

FACTS

Dr. Ledolph Baer, incident to his appointment to a position in a manpower shortage category at the National Oceanic and Atmospheric Administration (NOAA), was authorized relocation expenses from San Diego, California, to Rockville, Maryland, by a travel order approved September 6, 1974. Dr. Baer was erroneously informed that his travel authorization included per diem for himself and his family for up to 30 days at the new duty station and miscellaneous expenses. The travel authorization does not show entitlement to these expenses. However, the estimated cost of per diem on the travel authorization appears to be

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based on a 30-day period. After arrival at his first duty station Dr. Baer submitted a travel voucher requesting reimbursement of his relocation expenses including per diem for his family and miscellaneous expenses. The Washington Field Finance Office, NOAA, administratively denied the claim for miscellaneous expenses. It allowed reimbursement for per diem for Dr. Baer but disallowed per diem for his family.

Dr. Baer then filed a reclaim voucher in the amount of \$1,079.38. NOAA forwarded the reclaim voucher to our Claims Division for direct settlement. The reclaim voucher was denied by the Claims Division in a Certificate of Settlement issued July 28, 1978. In addition, the Claims Division found that NOAA had erroneously overpaid Dr. Baer \$177.37 in travel costs and \$106.25 in per diem, a total of \$283.62.

Dr. Baer has requested reconsideration of the determination by the Claims Division. He contends that since these additional expenses were authorized orally and that by relying on such authorization he acted in good faith, the Government has a binding obligation to pay for the additional expenses. He also cites para. 2-1.5e(2) of the FTR to establish the Government's liability for these expenses. Paragraph 2-1.5e(2) states:

"(2) Agency responsibility. Because new appointees usually lack experience in Government procedures, each agency shall adopt special measures to provide full information to new appointees concerning the benefits which may be available to them for travel and transportation involved in reporting to their official stations. Special care shall be taken to inform appointees of the limitations on available benefits and to prevent any misinformation from being given to appointees who are not eligible for payment of travel and transportation costs."

OPINION

The authority to allow Government employees reimbursement for miscellaneous expenses, and per diem for family on a permanent change of station is contained in 5 U.S.C. 5724a (1976). Section 5724a authorizes reimbursement for those expenses only for an employee transferred in the interest of the Government from one official station or agency to another for permanent duty or a former employee separated by reason of reduction in force or transfer of function who, within

1 year after separation is reemployed by a nontemporary appointment at a different geographical location.

Appointees to manpower shortage positions are entitled to travel and transportation expenses from their places of residence at time of selection or assignment to their duty station in accordance with 5 U.S.C. 5723 (1976), which provides for reimbursement of the travel expenses of the appointee and payment of the transportation expenses of his immediate family and of his household goods and personal effects to the extent authorized in 5 U.S.C. 5724 (1976). No other expenses are authorized in section 5723. Implementing regulations for shortage category appointees are set forth in the FTR at para. 2-1.5f. Subparagraph (4) of para. 2-1.5f expressly prohibits the reimbursement of miscellaneous expenses and per diem for family. Under the applicable statutes the amounts claimed by Dr. Baer are not for payment. The applicable regulations clearly state the statutory limitations. See 54 Comp. Gen. 747 (1975); B-181080, May 21, 1974; B-194255, April 3, 1979; and B-186162, September 20, 1976.

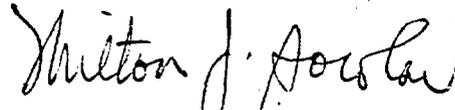
It is unfortunate that Dr. Baer as a shortage category employee was erroneously authorized allowances which are statutorily conferred only upon transferred employees. It is a well-settled rule of law, however, that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations, and this is so even though the agent may have been unaware of the limitations on his authority. See German Bank v. United States, 148 U.S. 573, 579 (1893); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); 53 Comp. Gen. 11 (1973); and B-177565, February 9, 1973.

With regard to the determination that NOAA overpaid Dr. Baer in the amount of \$106.25 for per diem, we agree. When Dr. Baer filed his original travel voucher, he claimed per diem for himself and his family for travel and while occupying temporary quarters. In reimbursing Dr. Baer for his per diem, NOAA erroneously included the days he was occupying temporary quarters. Paragraph 2-1.5f(3)(a) of the FTR's allows per diem for appointees in a manpower shortage category only while in a travel status.

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With regard to the determination that Dr. Baer was overpaid \$177.37 in travel costs, we agree. The travel order of September 12, 1974, authorized travel by 2 automobiles at 12 cents per mile under FTR para. 2-2.3b. Dr. Baer was reimbursed on this basis. The mileage rate allowed Dr. Baer was based on 3 passengers in each of the automobiles. There was no authorization for separate travel by any member of his household, as all members were included in the mileage rate.

Accordingly, the action of the Claims Division is sustained.



For The Comptroller General
of the United States